

HAYWARD CITY MANAGER EMPLOYMENT AGREEMENT

THIS AGREEMENT (“Agreement”), dated for convenience the **23rd day of April 2024**, is by and between **DUSTIN CLAUSSEN**, an individual (“Employee”) and the **CITY OF HAYWARD**, a public body of the State of California (“Employer”) and is effective May 6, 2024.

RECITALS:

WHEREAS The Employer desires to appoint the Employee to the position of Interim City Manager, with that reassignment being anticipated to last until a permanent City Manager is selected and assumes that office; and

WHEREAS The Employer desires to establish certain conditions of this temporary appointment, provide appropriate compensation and benefits, and set working conditions for such assignment to the position of Interim City Manager; and

WHEREAS The Employee desires to accept this appointment and promotion on a temporary basis as described above and on such terms as set forth herein.

NOW, THEREFORE, in consideration of the covenants and conditions hereinafter recognized, Employee and Employer agree to the following:

Section 1 Term

This Agreement shall remain in effect until a permanent City Manager is selected and assumes that office, unless Employee resigns (either to resume Employee’s prior position or to leave City service) or Employee is removed or terminated earlier by the City Council pursuant to Section 5 of this agreement.

Section 2 Duties and Authority

Employer agrees to employ Employee as Interim City Manager to perform the functions and duties specified in Article VII sections 700 et seq. of the Hayward City Charter and such other lawful and appropriate duties and functions as directed by the City Council, on a temporary basis.

Section 3 Compensation

As of May 6, 2024, Employee's Base Salary will be set at \$381,000.00.

Upon the end of this temporary appointment, and if Employee returns to the Employee’s Prior Position, the City shall pay Employee a salary equal to what Employee had been earning under Employee’s existing Employment Agreement (adjusted on an equal basis, if such an adjustment

occurs, for all other employees similarly situated, if such adjustment occurs during Employee's service as Interim City Manager).

During the Term of this Agreement, Employer agrees to pay Employee on the same schedule as other City of Hayward employees, which is currently bi-weekly.

Section 4 Health, Disability, Life Insurance, and Other Benefits

Employee shall continue to receive the same benefits as received in Employee's Prior Position and as provided under Employee's Existing Employment Agreement. There will be no change in medical, dental, vision, disability or life insurance; annual leave accrual; management leave entitlement; retirement formula and percentage contribution; deferred compensation; personal equipment stipend; health and wellness stipend; automobile allowance, or any other benefits to which Employee was entitled in Employee's Prior Position during this interim appointment, other than as specifically set forth in this Agreement.

In addition to the benefits set forth herein, all actions taken by the City Council relating to benefits for Unrepresented Management Employees shall be considered actions granting the same level of benefits to Employee, unless mutually agreed otherwise between Employer and Employee.

Section 5 Termination

In this position, your employment is "at will" and you serve at the pleasure of the City Council. You will retain retreat rights to the rank of Assistant City Manager for the duration of this assignment. These retreat rights will not apply if termination of employment is "for cause" or if there is an active investigation or performance management process underway.

Termination of this Agreement may occur under any of the following circumstances:

- A. If after proper meeting notice, a majority of the governing body votes to terminate Employee at a duly authorized public meeting;
- B. If Employer, residents, or Legislature acts to amend any provisions of the Charter, Ordinances, or appropriate enabling legislation pertaining to the role, powers, duties, authority, and responsibilities of Employee's position, and such amendment substantially changes the form of government, Employee shall have the right to declare that such amendment constitutes termination;
- C. If Employee resigns following an offer by Employer to accept resignation, whether such offer is formal or informal, then Employee may declare a termination as of the date of Employee's acceptance of such formal or informal offer;
- D. If either party fails to cure a breach of contract as declared by either Employer or Employee

within a 30-day period after the declaration of such breach of contract, provided written notice of such breach of contract is provided in accordance with provisions of Section 21;

- E. If Employee is convicted of a felony or misdemeanor involving moral turpitude, or if it is established that Employee's performance constitutes malfeasance or gross dereliction of duty;
- F. If Employee fails or refuses to follow a direct, lawful, and material order by Employer, representing the direction of a majority of the Council; and
- G. If Employee violates one or more tenets or ethical principles of ICMA.

Section 6 Hours of Work

Employee shall be an exempt employee under FLSA. Employee does not have set hours of work but is expected to engage in those hours of work necessary to fulfill the obligations of the City Manager's position. Employer recognizes that the Employee must devote a great deal of time to business of the City outside of the City's customary office hours and Employee's schedule of work each day and week may vary in response to the requirements of the work to be performed. Employee is required to maintain a regular on-site presence during normal business hours that is sufficient to properly administer and oversee the activities of the City and its employees, to provide accessibility to City Council members, Department Heads, residents, and other persons or firms who have business with the City and to generally ensure that the City functions appropriately on a day-to-day basis. Employee is expected to be available at all times, except for time taken on personal matters, such as vacations; Employer expects Employee to make prudent and reasonable arrangements for such personal time off, such as reasonable notice and arrangements, for example, for acting City Managers.

Employee shall not take more than fifteen (15) workdays of said leave at any one time, exclusive of holidays recognized by Employer, to which Employee shall also be entitled. Upon approval of the Council, leave may be extended beyond the fifteen (15) workday limit established above.

Section 7 Outside Activities

The employment provided for by this Agreement shall be Employee's sole employment, unless otherwise agreed to by Employer prior to Employee engaging in any such other employment.

Section 8 Indemnification

Beyond that required under Federal, State or Local Law, Employer shall defend, save harmless and indemnify Employee against any tort, professional liability claim, or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Employee's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities

unless the act or omission involved willful or wanton conduct. Employer shall indemnify Employee against any and all losses, damages, judgments, interest, settlements, fines, court costs, and other costs and expenses of legal proceedings including attorneys' fees, and any liabilities incurred by, imposed upon, or suffered by such Employee in connection with or resulting from any claim, action, suit, or proceeding, actual, or threatened, arising out of or in connection with the performance of her duties. Any settlement of any claim must be made with prior approval of Employer in order for indemnification, as provided in this Section, to be available.

Section 9 Abuse of Office or Position

If Employee is convicted of a crime involving an abuse of her office or position, all of the following shall apply: (1) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse City such amounts paid; (2) if City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is generally not obligated to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and (3) if this Agreement is terminated, any Severance Pay and Severance Benefits related to the termination that Employee may receive from City shall be fully reimbursed to City or shall be void if not yet paid to Employee. For purposes of this Section, abuse of office or position means either: (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority; or (2) a crime against public justice.

Section 10 Bonding

Employer shall bear the full cost of any fidelity or other bonds required of Employee under any law or ordinance.

Section 11 Other Terms and Conditions of Employment

Employer may set such other terms and conditions of employment, as it may determine from time to time, relating to the performance of Employee, provided such terms and conditions are not inconsistent with or in conflict with the provisions of this Agreement, the Hayward City Charter, or any other law.

Section 12 Notices

Notice pursuant to this Agreement shall be given by depositing in the custody of the United States Postal Service postage prepaid addressed as follows:

- (1) EMPLOYER: Mayor of the City of Hayward
City Hall
777 B Street
Hayward, CA 94541

(2) EMPLOYEE: Dustin Claussen
 Address on File

Alternatively, notice required pursuant to this Agreement may be personally served in the same manner as is applicable to civil service of process. Notice shall be deemed given as of the date of personal service or as the date of deposit of such written notice in the course of transmission in the United States Postal Service.

Section 13 General Provisions; Integration; Severability

This Agreement sets forth and establishes the entire understanding between Employer and Employee relating to the employment of the Employee by the Employer. Any prior discussions or representations by or between the parties are merged into and rendered null and void by this Agreement. The parties by mutual written agreement may amend any provision of this Agreement during the life of the Agreement. Such amendments shall be incorporated into and made a part of this Agreement.

The invalidity or partial invalidity of any portion of this Agreement will not affect the validity of any other provision. In the event that any provision of this Agreement is held to be invalid the remaining provisions shall be deemed to be in full force and effect as if they have been executed by both parties subsequent to the expungement or judicial modification of the invalid provision.

IN WITNESS WHEREOF, Employee has executed this Agreement, and Employer, by and through its Mayor, duly authorized to act, has executed this Agreement.

Dated: April 23, 2024

Executed by:

Mark Salinas
Mayor, City of Hayward

Dustin Claussen
Employee (Interim City Manager)

ATTEST:

Miriam Lens
City Clerk

APPROVED AS TO FORM:

Michael S. Lawson
City Attorney